

SENATOR CHAMBERS: A right to have an election contest heard is grounded in the Constitution of this state. They said that the Clerk is a mere repository. They can't say that because the Clerk is the one who approves the bond. There is no statement in the statute about how much the bond should be. Somebody must make that determination. Who makes it? The Clerk. Who else could make it? The Clerk. That means he is more than just a repository. If he is to approve, that means he can disapprove. Whenever you are given alternatives, that means you are allowed to make a judgmental decision. When you make a judgmental decision you are not a mere repository. So there's a lot of issues that should be brought into clear focus here. I'm going to have an opportunity to speak some more. I'm going to stay within the confines - the ten minute time limit - and wind up with this one thing. In the Declaration of Independence America declared its independence from Great Britain by outlining conduct of George III, saying that his conduct was the same as that of a tyrant. That he was going to reduce the people under absolute despotism and to avoid this they were going to overthrow England's rule of the United States. Represent -- taxation without representation was what they talked about. Representation results from voting. If the Legislature denies the people of the 48th District the right to seat whom they choose, that has effectively denied the people of that representation which was so strongly condemned by the Declaration of Independence and the founders of this country.

PRESIDENT: Chair recognizes Senator Warner.

SENATOR WARNER: Mr. President, I'd like to inquire a procedural question of the Chair, if I may first.

PRESIDENT: Yes sir.

SENATOR WARNER: Is the Cavanaugh motion subject to amendment?

PRESIDENT: Yes.

SENATOR WARNER: Fine. I don't intend to do that, but I wanted to know. I'd only like to respond to a couple of points. Most of the argument, it appears to me of Senator Cavanaugh, properly centers around a question of the constitutional requirements upon this body. Particularly, in relation to our state Constitution. I don't differ with that argument. It is a constitutional question. The point, it seems to me, is whether or not this body has the responsibility of making this interpretation, or whether it is more proper that the courts of this land have this responsibility. Again, I would refer to the case which reference has been made to a number of times this morning, where the Supreme Court has very clearly stated that the ultimate interpretation of the Constitution is their responsibility. To follow the route, as my original motion suggests, creates no problem for either of the contestants as far as the result of a recount of the contested election. If that issue was taken to court then the courts would hold that that is an unconstitutional and unreasonable requirement, in section 32-1001.31. Then both contestants are exactly in the position that they were prior to the time that the letter from the Attorney General came. So the only question is who has the